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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,492	08/18/2003	Joey Jorgenson	ONEI3 - P2966	5486

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J MARK HOLLAND & ASSOCIATES  
3 CIVIC PLAZA SUITE 210  
NEWPORT BEACH, CA 92660

EXAMINER

HOEY, ALISSA L

ART UNIT PAPER NUMBER

3765

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

5P

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/643,492	JORGENSEN, JOEY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alissa L. Hoey	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 15-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 29-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 15-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected embodiment of the invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 03/03/05.

### ***Claim Objections***

2. Claim 30 is objected to because of the following informalities: it is unclear what the "fourth section" is and it is further unclear what the "first section and second section" are referring to. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4, 29-32 and 34-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Ragot et al. (US 2003/0208829).

In regard to claim 1, Ragot et al. teaches board shorts (10) that are inherently worn during surfing or similar activities (paragraph 0003). A first portion fabricated from a relatively less elastic material (12, 16, 30, 32) and the first portion comprising the

majority of the shorts (paragraph 0009). A second portion (18, 20, 24) fabricated from relatively more elastic material and the second portion configured and positioned in the shorts to provide elastic stretch of the second portion during movement of the wearer's body (paragraph 0016).

In regard to claim 2, Ragot teaches the second portion including an elongated section extending from a lower edge of the first leg of the shorts around, behind and across the buttocks area of the shorts and down to a lower edge of the second leg of the shorts (figures 1 and 2, identifiers 24, 20 and 18).

In regard to claim 3, Ragot teaches the short (10) being configured to be sized relatively loose on the wearer and the second portion is sized and positioned to return to a relatively outstretched condition after the movement of the wearer's body (paragraph 0014-0015).

In regard to claim 4, Ragot teaches the second portion being positioned as an elongated strip of material connected at most of it's edges to the relatively inelastic first portion material (figures 1 and 2, identifiers 24, 20, 18, 14, 30, 32).

In regard to claim 29, Ragot teaches a garment (10) adapted to be worn about a portion of the body and at least one limb of a person. The garment comprising a first limb section adapted to receive within and permit to pass there through one limb of the person (22). A torso section having a back portion and a front portion, the back portion and the front portion adapted to receive a portion of a person's torso (figures 1 and 2). An elongated strip of material (18, 20, 24) relatively more stretchable than adjacent materials (12, 32, 30, 14) in the limb section and the torso section. The elongated strip

positioned across at least substantially all of one of the portions of the torso section and extending into at least a part of the first limb section so that certain rotations of the limb with respect to the wearer's torso would inherently cause the elongated strip to stretch (figures 1 and 2).

In regard to claim 30, Ragot teaches the elongated strip extending along an entire length of each of the first and second limb portions (figures 1 and 2).

In regard to claim 31, Ragot teaches a second limb section similar to the first limb section and the second limb section adapted to receive within and permit to pass through the opposing limb of the person (figures 1 and 2). The torso section joining together the first limb section and the second limb section (figures 1 and 2).

In regard to claim 32, Ragot teaches the elongated strip of relatively stretchable material having a substantially arcuate shape, with a portion of the stretchable material positioned along a central back area of the garment (18, 20). The elongated strip of relatively stretchable material extending continuously along a length of each of the first limb section and the second limb section (18, 20, 24).

In regard to claim 34, Ragot teaches the garment being sized and configured to fit loosely rather than snugly against the wearer's body when the wearer is in a normal standing position (paragraph 0006-0009).

In regard to claim 35, Ragot teaches the elongated strip of relatively stretchable material extending continuously from an edge of the first limb section remote from the torso section, across the first limb section and the torso section and the second limb

section, to an edge of the second limb section remote from the torso section (18, 20, 24).

In regard to claim 36, Ragot teaches the torso section, the first limb section and the second limb section comprising a garment body having a first edge and an opposing edge remote therefrom. The elongated strip of relatively stretchable material extends from the one garment edge across the garment body to the opposing garment edge (figures 1 and 2).

5. Claim 37 is rejected under 35 U.S.C. 102(b) as being anticipated by Onozawa (US 5,282,277).

In regard to claim 37, Onozawa teaches a portion of neoprene material in a garment (column 2, lines 57-68). The portion having an edge joined to abutting relatively less elastic material in the garment (column 3, lines 7-22). The neoprene portion comprising an integral portion of the garment rather than overlying portions of the garment (column 3, lines 24-33).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5-14 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ragot.

In regard to claim 7, Ragot teaches a board short (10) constructed substantially from relatively non-elastic material (paragraph 0023), including an integral stretch panel affixed at opposing edge to the relatively less elastic material (0016-0017). The integral stretch panel (18, 20, 24) positioned between the relatively less elastic material (12, 32, 14, 30) to form an integral portion of the garment. An integral stretch panel capable of being in a relatively loose and unstretched position when the wearer is in a standing position.

In regard to claim 8, Ragot teaches the stretch panel comprises an elongated strip fabricated within the body of the short (figures 1 and 2).

In regard to claim 9, Ragot teaches the garment fabricated from a material other than that of the stretch panel (paragraph 0023). The garment having stretch means (18, 20, 24) at a selected position in the body of the garment and inherently the garment is sized to fit relatively loosely on the wearer. The stretch means are capable of permitting expansion of the garment during certain flexing of the wearer's body (paragraph 0026).

In regard to claim 10, Ragot teaches the stretch means comprises an elongated strip of stretch material integrally fabricated within the body of the garment (18, 20, 24).

In regard to claim 11, Ragot teaches board shorts (10) for use during surfing or similar activities, including a central portion fabricated from a material other than the stretch panel material and configured to loosely cover a wearer's lower torso (paragraph 0023). The stretch panel extending through and forming a part of the central portion (18).

In regard to claim 12, Ragot teaches at least one leg portion connected to the central portion and the stretch panel extending through and forming a part of the at least one leg portion (figure 1 and 2).

In regard to claim 13, Ragot teaches at least one leg portion configured to loosely cover at least the upper section of one of the wearer's legs (paragraph 0005-0009).

In regard to claim 14, Ragot teaches the stretch panel being positioned within the shorts to stretch from its normal relaxed state in response to leg movement of the wearer (paragraph 0005-0009).

In regard to claims 5-14 and 33 Ragot fails to teach the stretchable material being an electrometric foam or a 4-way stretch neoprene material.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the stretchable material being an electrometric foam or a 4-way stretch neoprene material because Applicant has not disclosed that the stretchable material being an electrometric foam or a 4-way stretch neoprene material provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the stretchable material being electrometric foam, 4-way stretch neoprene or elastane fibers because as long as the stretch panel is made out of stretchable material that facilitates garment expandability, improved wearability, increased comfort and extended garment life and as detailed in Applicant's specification on page 5, lines 1-10 and page 22, lines 7-12 the type of stretchable fabric can be one of many stretchable materials known in the art.



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Therefore, it would have been an obvious matter of design choice to modify Ragot to obtain the invention as specified in claims 5-14 and 33.

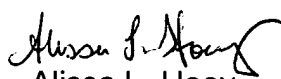
***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Herlich, Kneibler, Cohen, Belpaume, Polsky, March, Bucalo, Fee, Wildinon, Davis, Owen and Vilalobos are all cited to show closely related garments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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